

MEMORANDUM

JUNE 27, 1985

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM WHITMAN, ASSISTANT TO THE DIRECTOR

SUBJECT: TENT CITY - MEMORANDUM OF UNDERSTANDING

On April 18, 1985 the Authority granted tentative designation to the Tent City Corporation (Tent City) and Urban Investment and Development Company (UIDC) for the redevelopment of Parcels 11A and 11B in South End Urban Renewal Area, Mass. R-56.

Since tentative designation the project has made significant progress, including resolution of substantial design issues, obtaining a five million dollar mortgage increase from MHFA, agreement on numerous coordination issues between UIDC and Tent City, completion of a Draft Environmental Impact Statement and identification of final steps necessary to bring the project to closing by the end of this calendar year.

Unfortunately, several technical matters were not resolved in time for funding the Urban Development Action Grant on April 30 of this year. The UDAG application has been "rolled-over" and will be acted upon by September 30, 1985, at which time the application will be technically complete.

In order to firm up the agreements reached to date among the BRA, Tent City and UIDC, they have been memorialized in a Memorandum of Understanding, a final draft of which is attached. The Agreement addresses in large measure the coordination of activities between UIDC and Tent City.

With regard to the BRA, the agreement sets forth the following:

- (1) UIDC will convey its parcels on the Tent City site to the Authority at no cost to the Authority;
- (2) The BRA will lease to UIDC the sub-surface rights to the entire site for 50% of net profits of the 698 space parking garage which UIDC will construct there;
- (3) The BRA will lease to Tent City the surface and air rights to the entire site for \$1 per annum for the construction of the 270 units of low, moderate and market-rate housing;
- (4) UIDC will lease 129 parking spaces to Tent City for \$1 per annum for use by the tenants at Tent City; and
- (5) The BRA will provide UIDC with development rights in consideration for UIDC constructing and operating that portion of the parking garage allocated to Tent City housing.

The development rights which the attached Memorandum of Understanding commits to provide to UIDC in exchange for its contributions to the Tent City project are on a parcel of land located between the Colonnade and Copley Marriot Hotels on Huntington Avenue, known as Parcel A. UIDC currently owns a 99-year lease from the Massachusetts Turnpike Authority (MTA) on two thirds of the site, approximately 13,342 square feet. The Authority owns the other third of the site, approximately 6,318 square feet, which runs the length of the site along Huntington Avenue and was taken by the Authority from the MTA for roadway improvements which were never constructed. See attached maps.

The Memorandum of Understanding further provides that designation of UIDC by the Authority for Parcel A will not occur without complete review of UIDC's proposal by the community and the Authority. Approval of the project by the MTA will be required. A preliminary meeting with MTA revealed that it is supportive of development of the site.

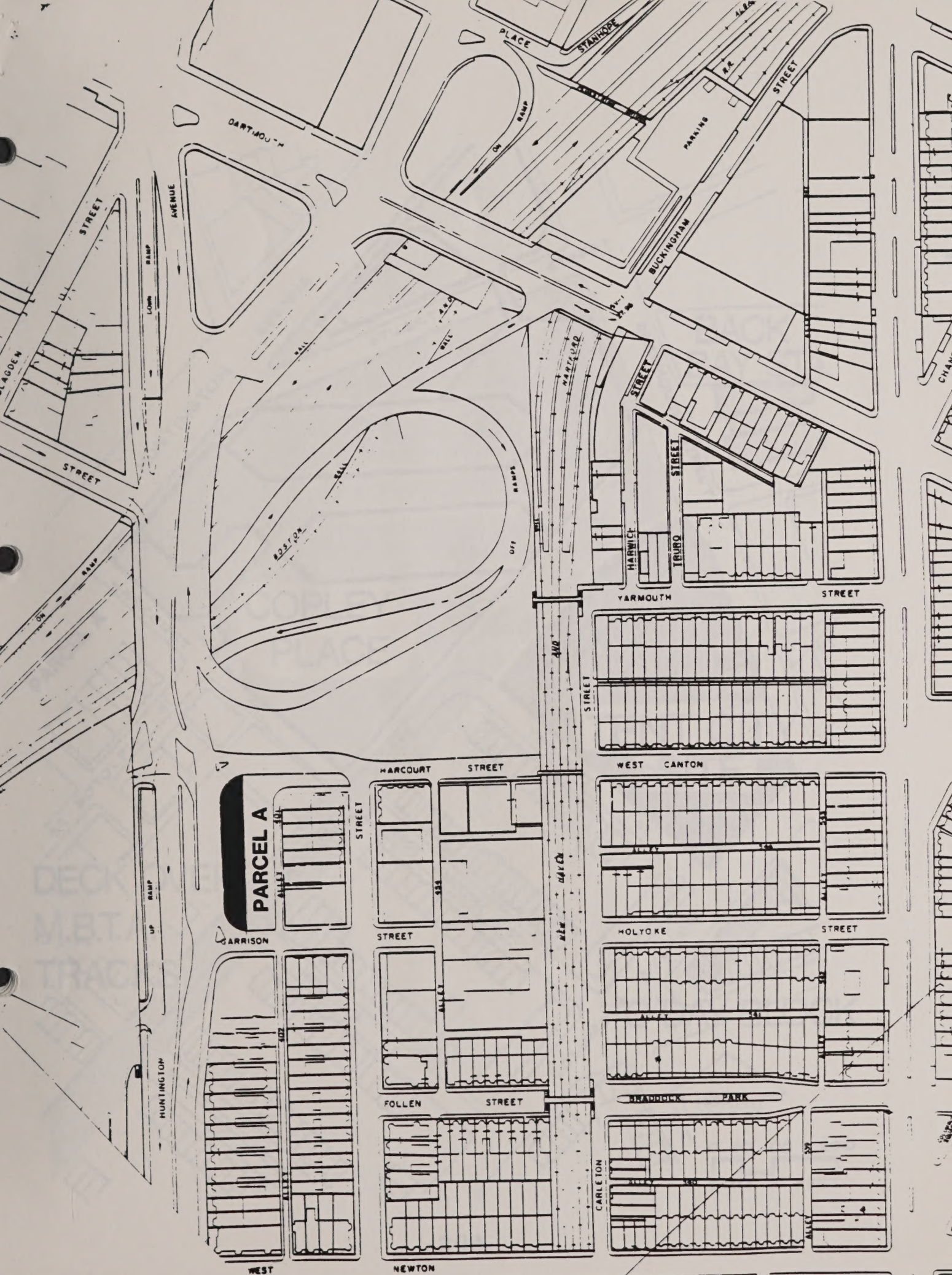
UIDC has agreed that any profits earned on the development of Parcel A, currently envisioned as condominiums with parking, will be applied to offset any losses incurred by UIDC in the construction and operation of the Tent City garage. If the development of Parcel A results in any surplus over and above UIDC's costs for building the Tent City garage, the Authority will share in that surplus. If the development of Parcel A does not adequately cover UIDC's costs additional arrangements will have to be made.

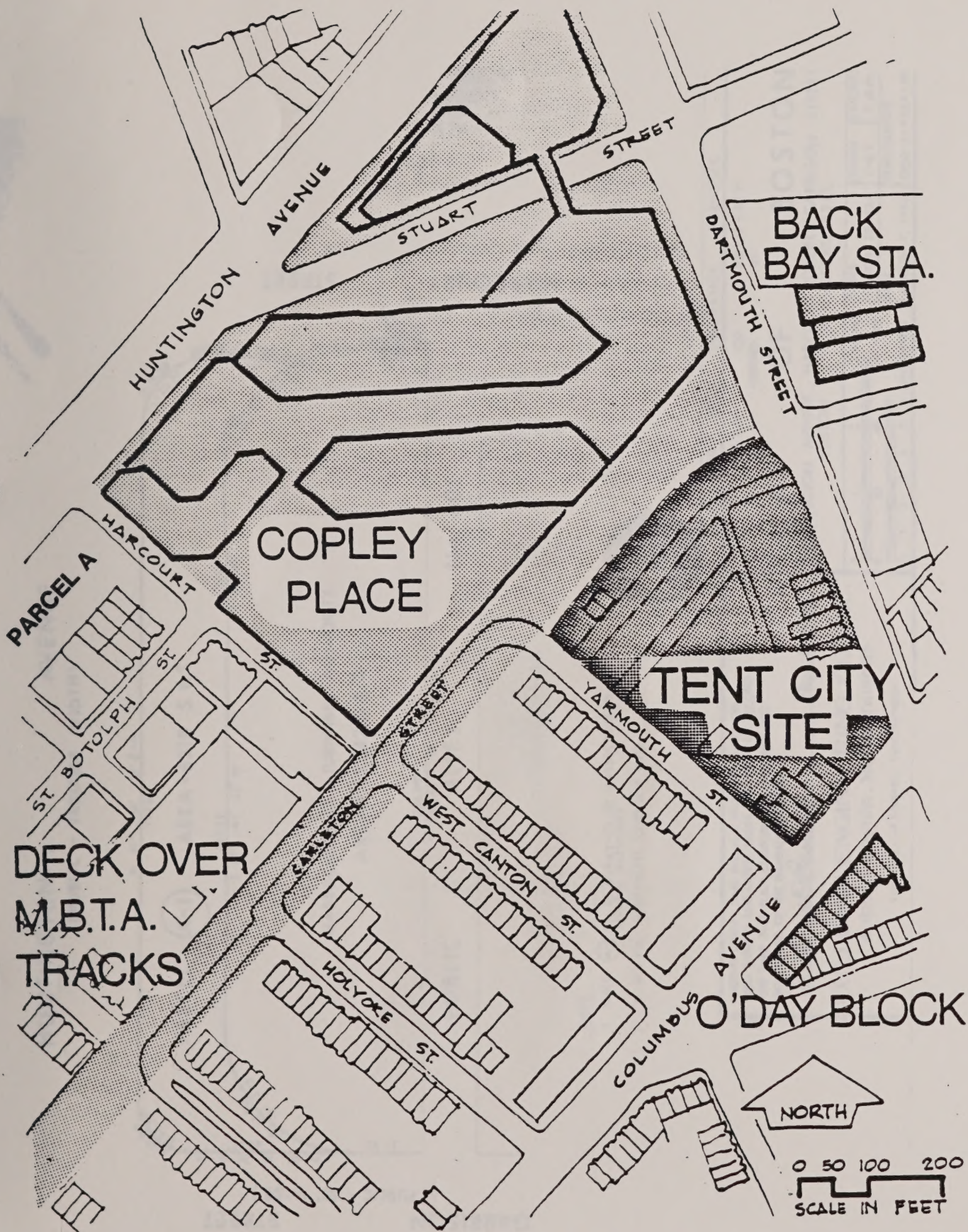
The Tent City project is on an extremely tight schedule at this point because of the developer's concern that tax law changes currently before Congress will negatively affect its ability to raise the syndication proceeds which constitute the project equity. The willingness of the Authority to enter into this preliminary agreement at this time will send an important positive signal to Tent City and UIDC and is critical to continued progress on the project by the parties.

I recommend, therefore, that the Director be authorized to execute a Memorandum of Understanding, substantially in the form attached hereto, to further progress on the Tent City project.

An appropriate vote follows:

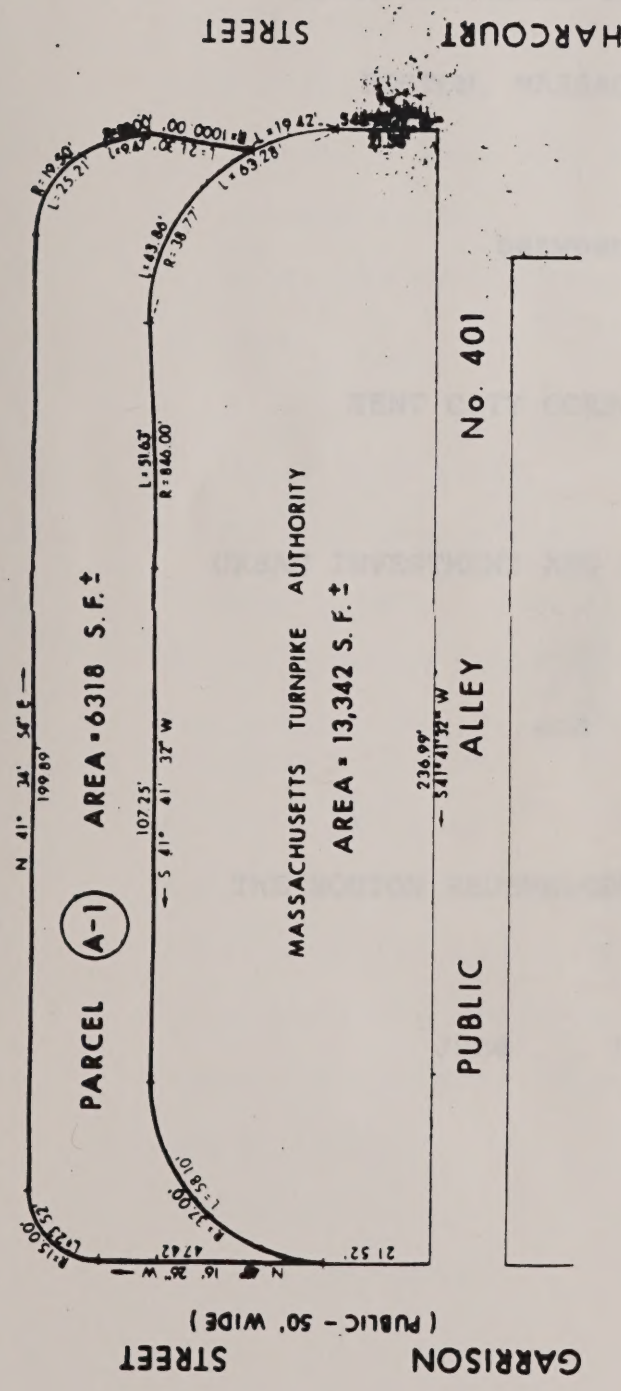
VOTED: That the Director be and hereby is authorized to execute a Memorandum of Understanding, substantially in the form attached, to further the Tent City development.





HUNTINGTON AVENUE

(PUBLIC - VARIABLE WIDTH)



- NOTE
1. PARCEL (A-1) TO BE CONVEYED TO MASSACHUSETTS TURNPIKE AUTHORITY
 2. * M.B.T.A. SOUTHWEST CORRIDOR BASE



I HEREBY CERTIFY THAT THIS IS A TRUE PLAN BASED ON FIELD SURVEYS AND LATEST DEEDS AND PLANS OF RECORD, AND THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS

Richard D. Pashinski Aug. 8, 1980

CULLINAN ENGINEERING CO., INC.
Auburn - Boston, Massachusetts
Consulting Civil Engineers - Land Surveyors

FOR TITLE INSURANCE PURPOSES	
PLAN OF PROPERTY OWNED BY	PURPOSES
CITY OF BOSTON	
HUNTINGTON AVENUE, HARCOURT STREET, GARRISON STREET BOSTON, MASSACHUSETTS	
SCALE 1 INCH = 20 FEET	CHECKED
DATE AUGUST 7, 1980	A.D.M.
PLAN NUMBER	
0850-3-P20A-80	

MEMORANDUM

RE: PARCELS 11A and B

SOUTH END URBAN RENEWAL AREA

BOSTON, MASSACHUSETTS

between

TENT CITY CORPORATION,

URBAN INVESTMENT AND DEVELOPMENT CO.

and

THE BOSTON REDEVELOPMENT AUTHORITY

June , 1985

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Re: Parcels 11A and B

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EXHIBITS

A.	Description of Site & Ownership
B.	Development Schedule
C.	Project Plan

6/20/85

Memorandum
Re: Parcels 11A and B

This Memorandum, dated as of June __, 1985, summarizes understandings and commitments made between TENT CITY CORPORATION (Tent City), URBAN INVESTMENT AND DEVELOPMENT CO. (UIDC), and THE BOSTON REDEVELOPMENT AUTHORITY (BRA) in order to clarify and confirm their respective obligations with respect to Urban Renewal Parcels 11A and B (this Agreement). Tent City UIDC and BRA are collectively called "the parties." Tent City and UIDC are collectively called the Project Parties.

1. Designated Developer. By action of the BRA on April 18, 1985, Tent City is the tentative designated developer of the land/air rights and UIDC is the tentative designated developer of the subsurface rights of Urban Renewal Parcels 11A and 11B (the Site) (Exhibit A attached hereto) in Boston's South End Urban Renewal Area.

2. Current Ownership. The Site is currently divided into parcels, some of which are owned by BRA and some by the City of Boston, others by UIDC (the UIDC Parcels), and others by other private owners, as shown in Exhibit A. The parties hereto hereby agree to carry out the land assembly and land disposition arrangements for the Site, subject to the terms and conditions of this Agreement.

3. Land Assembly: BRA Ownership. UIDC shall transfer to BRA for \$1.00 fee simple title to those portions of the Site currently owned by UIDC, subject to the terms and conditions of this Agreement. Both parties shall cooperate with BRA in completing land assembly by BRA of those portions of the Site currently owned by neither BRA nor UIDC, and Tent City will work actively in this effort.

4. Land Disposition.

4.1. Leases to Tent City and UIDC. BRA shall enter into 99-year leases with Tent City and UIDC, respectively, (the Leases) of the respective areas, including any required appurtenant easements, required by each of the parties hereto for its portion of the Project, as hereinafter defined, with rent to be paid to BRA as follows:

- (i) Tent City: One Dollar (\$1.00) per year.
- (ii) UIDC: One Dollar (\$1.00) per year, plus fifty percent of the net

profit generated by the Parking Garage once it reaches "break-even in operations," which shall mean the fiscal year in which the annual revenues from the Parking Garage are not less than the direct operating expenses of the Parking Garage plus debt service on any mortgage or mortgages required to finance the construction costs of the Parking Garage.

4.2 Closing Dates. The closing date for the delivery of deeds, the execution of leases and other documentation to accomplish the land assembly and land disposition required for the Project (the Land Disposition Closing Date) shall be not later than the closing on the construction financing for the Housing, Commercial Space and Open Space (the Tent City Construction Closing), and the closing on the construction financing for the Parking Garage (the UIDC Construction Closing) shall be not later than the Tent City Construction Closing. The Tent City Construction Closing shall occur on or before December 31, 1985, subject to the terms and conditions of this Agreement.

4.3. [See Page 2a] ^

In the event UIDC and BRA fail to agree by the Tent City Closing Date upon Garage Losses or Development Rights to be made available by BRA to UIDC, the initiation (but not necessarily the conclusion) of the arbitration process with respect to the determination of either Garage Losses under Section 4.3(ii) or Development Rights under Section 4.3(x) hereof shall be sufficient to require the Tent City Closing Date to proceed without delay, with all parties obligated to execute such documents as are required for the Tent City Closing without regard to any issues then in any arbitration process between UIDC and BRA.

5. Project. Tent City and UIDC wish to cooperate in developing, constructing and operating a mixed use Project on the Site consisting of:

5.1. Housing: approximately 270-300 units of mixed income housing of which up to 25% of the units will be low income, 50% moderate income and 25% market level (the Housing);

4.3 In consideration of UIDC's agreement under the terms hereof to provide 129 parking spaces for the Tent City housing the BRA agrees to grant designation to UIDC for so-called Parcel A on Huntington Avenue in the Fenway Urban Renewal Area between the Colonnade and Copley Marriot Hotels prior to conveyance to the BRA of UIDC's parcels on the Tent City site. Conditions precedent to said designation, however, include:

- (a) community review of the Parcel A project;
- (b) BRA design and financial review of the Parcel A project; and
- (c) Massachusetts Turnpike Authority approval of the Parcel A project.

Said designation shall be subject to the terms and conditions established by the BRA at the time of designation. UIDC and BRA shall use best faith efforts to accomplish all necessary reviews of the Parcel A project and agree on terms of designation by November 30, 1985. Toward that end UIDC shall provide a development schedule for the Parcel A project to the BRA within 30 days and preliminary drawings therefore within 60 days.

Currently, BRA and UIDC estimate UIDC's losses from the construction and operation of the 129 parking spaces to be provided for Tent City housing to be approximately One Million Dollars per annum for at least ten years. BRA and UIDC shall agree upon a final determination of such losses within sixty days hereof. If BRA and UIDC are unable to agree upon such losses, either party may resort to the use of independent appraisers and arbitration.

If the development of Parcel A by UIDC does not create consideration adequate to fully compensate UIDC for losses incurred as a result of building the 129 Tent City housing parking spaces, BRA agrees:

- (a) to commit to UIDC additional development rights adequate to offset any resultant losses to UIDC;
- (b) to execute a binding and secured promise to pay the amount of any such losses; or
- (c) to pay annually the net losses of the garage attributable to UIDC's agreement to lease said 129 parking spaces to Tent City under the terms hereof.

5.2. Commercial Space: approximately 6,000-7,500 square feet of commercial space (Commercial Space);

5.3. Parking Garage: an underground parking facility for 698 parking spaces for passenger vehicles (the Parking Garage) complete with the necessary ramps for automobile access, elevators, stairs and walkways for pedestrian access, and emergency exits; including as a part thereof the support structure required for that portion of the Housing, Commercial Space and Open Space located immediately above the Parking Garage, including without limitation the foundations, supports, and structural deck (the Support Structure); and

5.4. Open Space: open space on the surface level including landscaping, gardens, pedestrian walkways, access or service roads for the Housing and other surface facilities and amenities (the Open Space).

The Housing, Commercial Space, Parking Garage, and Open Space are hereinafter collectively known as the Project.

6. Urgent Need to Implement; Schedule. Time is of the essence. The Site was designated for clearance and redevelopment in 1965 and a substantial portion thereof is vacant or being used for surface parking, making the accomplishment of the Project a matter of urgency for the surrounding neighborhood and for the current residents of the few structures that remain on the Site. Further, with the growing shortage of affordable housing in the South End, the need for the Project has become even more urgent. Essential financial elements for Tent City's portion of the Project are now committed, particularly MHFA mortgage financing and SHARP assistance from the Commonwealth of Massachusetts, but are subject to strict time constraints which must be observed. These constraints require a Tent City Closing Date on or before December 31, 1985, as provided in Section 4 hereof, and the parties hereto shall make all possible efforts to achieve this Closing Date and to adhere to the Development Schedule set forth in Exhibit B.

7. Preliminary Design; Allocation of Project Responsibilities. The Project Parties have cooperated with each other in developing the preliminary design for the Project, a conceptual plan of which is attached as Exhibit C. The Housing, the Commercial Space and the Open Space are to be developed, constructed, operated and maintained by Tent City (the Tent City Elements), and the Parking Garage is to be

developed, constructed, operated and maintained by UIDC (the UIDC Elements).

8. Garage Size; Cost. The Garage shall consist of 698 spaces for passenger vehicles, of which 129 shall be for use by the residents of the Housing, and 569 shall be for use by UIDC's Copley Place development. Either Project Party may unilaterally decrease but may not increase the number of spaces to be constructed for its use.

9. Tent City Funding; Documentation for UDAG. Tent City has obtained the following funding commitments to construct its portion of the Project, including commitments for substantial financing from the Commonwealth's SHARP program and the Massachusetts Housing and Finance Agency, for Neighborhood Development Funds and Urgent Needs funds from the City of Boston. Tent City has also, through the City of Boston, applied for an Urban Development Action Grant (UDAG) from the U.S. Department of Housing and Urban Development for substantial additional financial support, which if granted would, together with the aforementioned commitments, provide adequate public funding for the Project, and the application for which requires a statement from UIDC as to its role in the Project. This Agreement, and any Additional documents reasonably required in support thereof, shall be utilized to satisfy such requirement, and each party shall execute such additional documents as may reasonably be required to satisfy the UDAG program or other publicly assisted loan or grant programs required for the Project, subject to the terms and conditions of this Agreement.

10. Environmental Process Underway. The final scope and design of the Project are subject to the study, evaluation and approval process required by state and federal environmental laws (the Environmental Process), which Environmental Process has been commenced by Tent City; will continue to be coordinated, administered and monitored by Tent City; and will have the full cooperation of UIDC. Sasaki and Associates is hereby confirmed by the Project Parties as the consultant responsible for preparing the draft and final environmental impact statement/report for the Project.

11. Joint Project; Cooperation. The parties shall diligently, expeditiously and with good faith best efforts proceed to accomplish the Project as a joint undertaking at the earliest possible time. The Project Parties shall carry out a cooperative design, development, environmental and construction process, using the same architect and, if applicable, the same construction manager. It is the present intent of the Project Parties to use the same general contractor unless this becomes not in the best interests of the Project. The parties shall cooperate to the fullest extent possible in:

11.1. preparing materials for and responding to issues raised in the Environmental Process;

11.2. obtaining any zoning changes or other governmental approvals required for the completion of the Project; and

11.3. any other actions reasonably required for the accomplishment of the Project.

12. Project Architect; Other Consultants. It is the present intent of the Project Parties that Goody Clancy & Associates, Inc. be the Project Architect for both Project Parties, subject to the execution of a design contract or contracts acceptable to both Project Parties. Selection of engineering and design subconsultants shall require the approval of both Project Parties.

13. Design Costs. Design and other preliminary Project costs related to construction shall be allocated between the Project Parties as follows:

13.1. Design. Each Project Party shall pay the costs of designing its portion of the Project.

13.2. Borings, Soils; Surveys. Borings, soils analysis, site surveys and other technical analysis required for the Project's foundations shall be allocated fifty percent (50%) to each Project Party.

13.3. Engineering. Each Project Party shall pay for the engineering costs associated with its respective portion of the Project. Any costs of Interdependent Elements shall be allocated fifty percent (50%) to each Project Party.

13.4. Environmental. Tent City shall advance the funds to pay for required environmental analysis by Sasaski Associates which will cost \$42,500 through filing of the Draft EIR/EIS plus additional cost for the Final EIR/EIS; provided, however, that UIDC shall pay seventy-five percent (75%) of these costs as an additional share of site design costs. Said payment by UIDC shall be made within thirty (30) days of any submission by Tent City to UIDC of any invoice or invoices for the cost of all or any portion of said environmental analysis.

13.5. Determination of Cost Allocations. Each Project Party agrees to accept as final a determination by the Project Architect of the allocation of any design costs specified in this section between said parties, after reasonable opportunity to hear any disputes with respect thereto raised by either Project Party. In making any such determination, the Project Architect shall attempt to allocate the costs in reasonable proportion to the responsibility of each respective Project Party for the particular cost item.

14. Provision of Parking for Housing. UIDC, at its sole cost, shall construct the 129 parking spaces for the Housing. UIDC shall lease to Tent City for 99 years at a total cost of One Dollar (\$1.00) per year a portion of the Parking Garage adequate to provide the 129 parking spaces (the Tent City Parking Sublease). UIDC shall operate, maintain and pay for actual and reasonable expenses for the operation and maintenance of such spaces as part of the total Parking Garage.

The Tent City Parking Sublease shall not be inconsistent with the terms of the Lease between UIDC and BRA, shall provide for satisfactory easements to Tent City, satisfactory to the Massachusetts Housing Finance Agency (MHFA) for access and egress through the Parking Garage, and shall be subject to the approval of BRA and MHFA. UIDC shall have full and usual rights of management and control over the operation of the Parking Garage and may sublease all or any portions of the Garage except for those spaces allocated to Tent City.

15. Interdependent Design Elements.

15.1. Determinations by Project Architect. It is understood that the Project Architect will establish design standards and construction plans and specifications for all aspects of the Project in which the Tent City Elements and the UIDC Elements are interdependent, as determined by the Project Architect (the Interdependent Elements). Any such determination by the Project Architect shall be in accordance with customary professional standards and, after a reasonable opportunity for both Project Parties to be heard, shall be final and binding upon the Project Parties.

15.2. Certification by Project Architect. It is further understood that Tent City will require the Project Architect

to certify that the final plans and specifications for the Parking Garage are sufficient to support the Housing, the Commercial Space and the portion of the Open Space directly above the Parking Garage.

15.3. Reciprocal Approvals of Design. Subject to reasonable time deadlines to be established in the Cooperation Agreement required pursuant to Section 22 hereof, the design of the Interdependent Elements shall be subject to the approval of both Project Parties, the design of that portion of the Parking Garage to be used by Tent City shall be subject to the approval of Tent City, such approval not to be unreasonably withheld or delayed, and the design of those portions of the Housing and Commercial Space which relate directly to the Parking Garage (including but not limited to any stairs, entrance ramps or elevators for the Parking Garage which may be incorporated into the Housing or Commercial Space) shall be subject to the approval of UIDC.

16. Relocation Assistance. There are currently fourteen (14) households living in residential units on the Site (the Tent City Residents). UIDC is currently constructing an apartment complex at Copley Place which includes units for households of low and moderate incomes (the Copley Units). UIDC shall cooperate with Tent City in relocating any of the Tent City Residents who qualify as low or moderate income households by offering to them low or moderate income units, as appropriate, in the Copley Units when said Copley Units are ready for occupancy on an interim basis at the established rents until low or moderate income units, as appropriate, are constructed and ready for occupancy as part of the Housing component of the Project.

17. Financing of Improvements. Each Project Party shall finance its respective portions of the Project and its share of Interdependent Elements.

18. Coordination of Construction. Each Project Party shall expeditiously commence and diligently complete the construction of its respective portions of the Project. Each Project Party shall coordinate its construction work so that construction of the Housing may commence as soon as feasible after the construction of the Parking Garage has commenced. The Project Parties shall agree upon a construction schedule which the general contractor and, if applicable, the construction manager shall implement in accordance with Section 11 hereof. Each construction activity shall be carried on in a manner designed to minimize disruption of any other

construction activities set forth in the agreed schedule. Any disputes as to the sequence of construction activities, or the proper allocation of the cost of such construction between the Project Parties hereto, shall be decided by the Project Architect, whose decision with respect thereto, after reasonable opportunity for both Project Parties to be heard, shall be final and binding upon the Project Parties hereto.

19. Title. UIDC shall make best efforts to convey to BRA good, marketable and insurable fee simple title to the UIDC Parcels free and clear of all encumbrances except easements and restrictions of record which will not materially interfere with the construction and operation of the Project and which are acceptable to a recognized title insurance company jointly selected by the Project Parties hereto. Any costs of title examination and certification to said title insurance company with respect to the UIDC Parcels shall be paid by the BRA. UIDC shall make best efforts to remove any defects in title to the UIDC Parcels and shall pay the actual and reasonable cost thereof. Each Project Party shall be responsible for paying the costs of title insurance for its portion of the Project. UIDC shall convey its site free of tenants and, upon the execution of this agreement, shall work cooperatively with BRA to relocate any tenants currently occupying any portion of the UIDC parcels. The BRA shall convey to Tent City and UIDC, respectively, good marketable and insurable leasehold title to the portion of the site covered under each respective 99-year Lease with the BRA.

20. Insurance. Each Project Party shall insure for casualty and builders risk the construction cost of its portion of the Project. During the construction period, each Project Party shall carry liability insurance of not less than One Million Dollars per person and per accident.

21. Easements. Each Project Party shall grant to the other at no cost reasonable easements (including but not limited to easements for construction, maintenance and access) through or over its portion of the Project for the benefit of that portion of the Project leased by the other Project Party. BRA shall provide or cause to be provided by the City of Boston any similar easements controlled by BRA or the City of Boston as may be required for the Project.

22. Further Documentation and Assurances; Cooperation Agreement. The parties agree to execute and deliver such documents as are reasonably required to carry out the purposes of this Agreement and further agree to negotiate in good faith on an urgent basis to implement this Agreement. The Project Parties shall use best efforts to execute by September 15, 1985, a Cooperation Agreement, detailing the rights, remedies and procedures to be followed during the design, construction and operational phases of the Project.

23. Governing Law. This Agreement shall be governed by and construed in accordance with Massachusetts Law.

24. Successors and Assigns; Nominee. This Agreement shall be binding upon the successors and assigns of each party hereto. Each Project Party may designate a nominee substantially controlled by it to perform any of its obligations hereunder, provided notice of such designation is given to the other parties reasonably in advance of the required action.

25. Amendments. Any amendments to this Agreement shall be in writing and signed by all parties hereto.

26. Termination. This Agreement will expire upon the issuance by the BRA of Certificates of Completion for all aspects of the Project, to the extent that it is not sooner superseded by the Cooperation Agreement or the Leases.

27. Exhibits. The Exhibits attached hereto are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above, intending the same to take effect as a sealed instrument.

TENT CITY CORPORATION

By: _____
Chairperson

URBAN INVESTMENT AND
DEVELOPMENT CO.

By: _____
Its

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Its

EXHIBITS

- A. Description of Site
& Ownership
- B. Development Schedule
- C. Project Plan

Exhibit A

Description of Site & Ownership

Exhibit B

Development Schedule

Exhibit C

Project Plan